

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY, FLORIDA

REGGY RODRIGUES,

Petitioner,

Appellate Division (Civil)  
Case No.: 502009AP000033XXXXMB  
L.T.: 502005CC013908XXXXMB  
Division: 'AY'

v.

UNIFUND CCR PARTNERS  
ASSIGNEE OF CITIBANK,

Respondent.

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Opinion filed: December 4, 2009

**Petition from the County Court in and for Palm Beach County,  
Judge Nancy Perez.**

For Appellant: Reggy Rodrigues, pro se, P.O. Box 1851, Boca Raton, FL 33429.

For Appellee: Mark W. Rickard, Esq., Jacobson, Sobo & Moselle, P. O. Box 19359,  
Plantation, FL 33318.

PER CURIAM.

Unifund, as assignee of Citibank, filed a complaint against Rodrigues, alleging that Rodrigues owes \$14,267.80 on his credit card account and that Rodrigues breached the credit card agreement by failing to pay these amounts due. The trial court granted Unifund's motion to compel Rodrigues's deposition and denied Rodrigues's motion for a protective order. The court further ordered that Unifund should coordinate the deposition with Rodrigues and accommodate Rodrigues in compliance with the Americans with Disabilities Act.

A party seeking review of an unappealable non-final order by way of a petition for writ of certiorari must demonstrate that the trial judge departed from the essential requirements of the

law and that the harm resulting from the erroneous order cannot be remedied in a plenary appeal of the final judgment. *See Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1099 (Fla. 1987). Unifund filed a motion to dismiss the petition, arguing that this standard was not met. Certiorari is allowable for a discovery order where the order would require production of trade secrets or other privileged or proprietary information because such “cat out of the bag” harm cannot be remedied on appeal. *Cordis Corp. v. O’Shea*, 988 So. 2d 1163 (Fla. 4th DCA 2008). It is also available for patently overbroad discovery requests. *Stihl Southeast, Inc. v. Green Thumb Lawn & Garden Center Newco, Inc.*, 974 So. 2d 1200 (Fla. 5th DCA 2008). Here, Rodrigues has alleged no such basis. Rodrigues has not demonstrated that the trial judge departed from the essential requirements of the law and that the harm resulting from the erroneous order cannot be remedied in a plenary appeal of the final judgment.

Unifund filed a Motion for Appellate Attorney’s Fees. Section 59.46, Florida Statutes, provides that a contract or statute generally allowing the payment of attorneys’ fees to the prevailing party must be construed as including the payment of attorneys’ fees on appeal. *See Motter Roofing, Inc. v. Leibowitz*, 833 So. 2d 788 (Fla. 3d DCA 2002). The contract provision entitled “Collection costs” provides that “if we have to refer collection of your account to a lawyer (who is not our salaried employee), to the extent permitted by law, you will have to pay our attorneys’ fees plus court costs or any other fees. If we sue to collect and you win, we will pay your reasonable legal fees and court costs.” When a party moves for prevailing party attorneys’ fees in connection with a non-final appeal or petition, the court grants the motion contingent upon the movant ultimately prevailing in the litigation. *E.g., Foley v. Fleet*, 652 So. 2d 962, 963 (Fla. 4th DCA 1995) (holding that the fact that the party prevailed on the petition for

writ of prohibition did not entitle her to attorneys' fee as the prevailing party in the entire litigation, but rather one aspect of the proceedings).

The Petition for Writ of Certiorari is **DENIED**. Unifund's request for appellate attorneys' fees is **GRANTED** contingent upon Unifund's ultimately prevailing in the cause. This cause is remanded so Rodrigues's deposition may be taken as the lower court ordered.

HAFELE, FINE, and COX, JJ., concur.